

**Opinion No. 554****Contracts—Claims—Creditors—Interpleader—State Highway Commission.**

HELD: Where a state highway contract has been performed, the work accepted and claim filed by the contractor for the balance due him on the contract, but when creditors of the contractor or sub-contractors have filed with the Highway Commission, under Chapter 20, Laws of 1931, notices of claims against the contract and bond, the Commission should institute a suit of interpleader against the contractor, the surety and the creditors to determine the proper distribution of the money in question.

June 15, 1934.

We have before us your letter of recent date in which you request an opinion on the propriety of paying one Thomas Staunton the sum of \$11,579.74, claimed to be due him from the State of Montana.

It appears that on or about the 13th day of October, 1932, Staunton entered into a contract with the State of Montana to construct about thirteen miles of highway in Toole County for the sum of \$116,622.33, more or less, depending on conditions, and that the job was completed shortly before the 19th day of September, 1933. The contract provides that Staunton shall do the work in the most workmanlike manner and in strict conformity with the plans and specifications of the State Highway Commission, and will pay "all laborers, mechanics, sub-contractors and material men who perform work or furnish material thereunder, and all persons who shall supply him or the sub-contractors with provisions, provender and supplies for the carrying on of the work." It further provides that "ninety per cent (90%) of the amount due for the completion of work during any working month, exclusive of 'extra work' and 'extra materials,' when and only when such amount is in excess of five hundred dollars (\$500.00) shall be paid to the contractor by the party of the first part within thirty days after the expiration of that working month, and all unpaid balances due on the final estimate shall be paid similarly to the contractor within

ninety days after the final acceptance of the contract, as provided in the second paragraph supra; the estimate in all cases of the work completed during any working month as well as the final estimate, to be prepared by the engineer of the State Highway Commission or his authorized assistant."

On the 19th day of September, 1933, the State Highway Commission finally accepted the work and it was then computed that the balance due Staunton on his contract amounted to the sum of \$11,579.74, no part of which has been paid. It further appears that on or about the 13th day of October, 1932, Staunton executed a bond to the State of Montana for \$116,622.33, with a surety company as surety, conditioned according to the terms of the contract and the provisions of section 1 of Chapter 20, Laws of 1931. Desiring to avail themselves of the benefit afforded by Chapter 20, creditors of Staunton or of sub-contractors filed notices of claims aggregating \$14,856.73 "against the contract and bond" with the Commission.

The facts before us are altogether too meager on which to base an opinion as to the proper disposition of the money in question. We, therefore, advise that the members of the State Highway Commission institute a suit in interpleader against Staunton, the surety company, and the creditors of Staunton or of sub-contractors who have filed notices of claims with it. This course was followed in the case of *Lanstrum v. Zumwalt*, reported in 73 Montana at page 502, and under the circumstances we deem it the only safe and satisfactory course. See, also, *Gary Hay & Grain Co. v. Carlson*, 79 Mont. 111.